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LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 01-Feb-08
Time 11:48 AM

Dated: 2/1/08

To: Pedro Sanchez
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

TRANSMITTAL No: KFM-TRN-000703

Rev: 00

Co/Job # 364-4347

Contract # 04-0120E4

Sub/Supplier:

Sub/Supplier No:

Subject: NOPC 17-011708, 20-011808, 22-011808 -- Supplemental NOPC

Special Provis. (SP) REF:

Standard Spec. (SS) REF:

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items:

☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☒ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	01-Feb-2008	1	NOPC - 17-011708 Form CEM 6201B	
02	01-Feb-2008	1	NOPC - 20-011808 Form CEM 6201B	
03	01-Feb-2008	1	NOPC - 22-011808 Form CEM 6201B	

These are transmitted as checked below:

☐ For Approval

☐ For Review/Comment

☐ Return For Correction

☒ For Your Use

☐ As Requested

☐ For Information

Remarks:

CC:

Submitted By:

George Atkinson

(KFM Staff Member - Originator of Transmittal)

Checked & Sent By:

Contract Admin/DCS Staff

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM
CEM-6201B (NEW 9/2002)

FOR STATE USE ONLY	
Received By	DATE
(For resident engineer)	

TO Pedro Sanchez (resident engineer)	CONTRACT NUMBER 04-0120E4	DATE February 1, 2008	IDENTIFICATION NUMBER 17-011708
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This is a Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on: DATE

January 17, 2008

The particular nature and circumstances of this potential claim are described in detail as follows

See attached "NOPC 17-011708 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The basis of this potential claim including all relevant contract provisions are listed as follows:

See attached "NOPC 17-011708 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

See attached "NOPC 17-011708 -- Supplemental Notice of Potential Claim".

(attach sheets as required)

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows:

See attached "NOPC 17-011708 -- Supplemental Notice of Potential Claim".

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Kienit/FCI/Manson ASV
SUBCONTRACTOR or CONTRACTOR
(Circle One)

George H Atkinson
(Authorized Representative)
for Dan Procter

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

NOPC 17-011708 – Supplemental Notice of Potential Claim

Nature and Circumstances of Potential Claim

Kiewit/FCI/Manson, AJV (“KFM”) has been obliged to perform an as-built survey of critical project features using survey methods different than those specified by the contract due to impractical, if not impossible, specification requirements.

Concerns have been expressed by the State and professional surveyors regarding the practicality of the Pier T1 anchor rod, sleeve, and dowel as-built survey requirements described in Special Provision Section 10-1.31, “Steel Structures”. Following several meetings between KFM and the State, the State acknowledged verbally that the specification could not be met as written and would be revised.

A Contract Change Order (“CCO”) modifying the anchor rod and dowel survey requirements was not issued. In order to facilitate the requirement to provide an Pier T1 as-built survey, KFM proposed an alternative survey plan for this work consistent with good survey practice and suitable for the project’s specific site conditions. This plan was described to the State in KFM letter #355 dated December 20, 2007. The State has not responded to KFM’s proposed survey work plan.

Due to a lack of direction otherwise from the State and a need to progress the work, KFM performed the as-built survey according to its proposed plan. The collected survey data has been submitted to the State to satisfy the requirements in Special Provision 10-1.31. The submitted data is under review.

The Pier T1 anchor rods and dowels are critical to successful continuation of Bay Bridge East Span construction activities. KFM is concerned by the potential liability which may arise as a result of KFM performing a survey other than that specified, albeit the survey performed is consistent with good construction practice and the data is acceptable to the State.

KFM requests that a CCO be issued immediately in accordance with Standard Specification 4-1.03, “Changes” to revise the contract specifications to be consistent with the survey performed by KFM.

Contract Basis for Potential Claim

Imminent completion of all contract work by KFM and Contract Acceptance by the Department without an approved CCO to modify the as-built survey provisions of Special Provisions Section 10-1.31 gave rise to this NOPC.

KFM, in order to satisfactorily progress the work in the absence of direction by the State, has been compelled to perform an as-built survey by means that are different than those specified in the contract. The work performed by KFM represents an alteration to the contract specifications. A CCO in accordance with Standard Provision 4-1.03, “Changes” is required to make this change effective. Since this CCO has not been issued or approved by the State, the work performed by KFM has not been incorporated into the contract.

All Contract Work on the project, including Pier T1 anchor rod, anchor rod sleeve, and dowel installation has continued towards completion and Contract Acceptance without a change order for a revised as-built survey specification being issued or becoming effective and incorporated into the contract.

Amended Standard Specification 9-1.07B, "Final Payment and Claims", fifth paragraph, notes that claims made in response to the Proposed Final Estimate following Contract Acceptance will not be considered if the Contractor did not first comply with applicable notice or protest requirements of the contract including 9-1.04 "Notice of Potential Claim".

Since a CCO reflecting a revised as-built survey specification was not approved as of January 17, 2008, and could not have been reasonably anticipated to be approved and effective by KFM's anticipated completion date of January 18, 2008, KFM made a Notice of Potential Claim to allow for claims associated with this work in accordance with Amended Standard Specification 9-1.07B, "Final Payment and Claims".

Estimated Cost of Potential Claim

Revision of the contract specifications to be consistent with the as-built anchor rod, anchor rod sleeve, and dowel surveys performed by KFM will not result in any additional cost to the State. Any additional or different surveys that KFM may be required to perform may result in cost to the State.

Future coordination or other conflicts with follow-on construction that may arise as a result of lack of conformance of the contract to the survey performed may result in additional claims to the State.

Time Impact Analysis

No adjustment to the contract time of completion is required as a result of performing the survey proposed by KFM in its Letter #355.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM
CEM-6201B (NEW 9/2002)

FOR STATE USE ONLY

Received By

DATE

(For resident engineer)

TO

Pedro Sanchez

(resident engineer)

CONTRACT NUMBER

04-0120E4

DATE

February 1, 2008

IDENTIFICATION NUMBER

20-011808

This is a Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on: DATE

January 18, 2008

The particular nature and circumstances of this potential claim are described in detail as follows

See attached "NOPC 20-011808 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The basis of this potential claim including all relevant contract provisions are listed as follows:

See attached "NOPC 20-011808 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

See attached "NOPC 20-011808 -- Supplemental Notice of Potential Claim".

(attach sheets as required)

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows:

See attached "NOPC 20-011808 -- Supplemental Notice of Potential Claim".

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Kiewit/FCI/Mansueto ASV

SUBCONTRACTOR or CONTRACTOR

(Circle One)

Greg H. Atkinson
Authorized Representative
Jim Dan Proctor

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

NOPC 20-011808 – Supplemental Notice of Potential Claim

Nature and Circumstances of Potential Claim

Kiewit/FCI/Manson AJV (“KFM”) was impacted by delayed steel piling deliveries from its pile supplier Trans Bay Steel, Inc (“TBS”). Late deliveries of piles extended KFM’s pile driving operations and impacted their efficiency.

Trans Bay Steel has notified the State that the pile delivery delays are due in part to direction received from the State with respect to the use of welding operator trainees. TBS has quantified their delays and other damages resulting from State direction and presented them to the State for compensation. The State has denied Trans Bay’s request for compensation and TBS has accordingly filed NOPC 6 regarding this matter.

NOPC 6 has not been resolved as of the filing date of this NOPC 20-011808. NOPC 6 was heard by the Disputes Resolution Board (“DRB”) on October 30, 2007. In its unanimous recommendation made December 21, 2007, the Board found that State should compensate the contractor under Standard Specification 4-1.03, “Changes”, for its additional costs and delays. This recommendation is pending acceptance or rejection from the parties in accordance with the specifications governing DRB operations.

KFM requests that upon settlement of responsibility for TBS pile delivery delays the State issue a contract change order under Standard Specification 4-1.03, “Changes”, to compensate KFM for its commensurate impact costs due to late pile delivery.

Contract Basis for Potential Claim

Imminent completion of all contract work by KFM and Contract Acceptance by the Department without an approved contract change order (“CCO”) to compensate KFM for pile delivery delays gave rise to this NOPC.

As discussed by TBS in NOPC 6, contract interpretations made by the State and the corresponding actions taken by the State adversely affected Trans Bay’s execution of its work. The State’s interpretations and actions discussed in NOPC 6 represent an alteration, deviation, and addition to the contract specifications and are compensable under Standard Specification 4-1.03, “Changes.”

Impacts to KFM from late pile deliveries are accordingly compensable to KFM under Standard Specification 4-1.03 in relation to the degree to which the schedule delay encountered by TBS is the result of actions taken by the State.

Following filing NOPC 6 by KFM on behalf of TBS, Contract Work continued towards completion and Contract Acceptance without a change order compensating KFM and Trans Bay for its damages being issued or becoming effective and incorporated into the contract.

Amended Standard Specification 9-1.07B, “Final Payment and Claims”, fifth paragraph, notes that claims made in response to the Proposed Final Estimate following Contract Acceptance will not be considered if the Contractor did not first comply with applicable notice or protest requirements of the contract including 9-1.04 “Notice of Potential Claim”.

As a CCO for damages due to the State’s actions described in NOPC 6 was not effective as of January 18, 2008, and could not be reasonably anticipated to be approved and effective by KFM’s anticipated

completion date of January 18, 2008, KFM made a Notice of Potential Claim to allow for claims associated with this work in accordance with Amended Standard Specification 9-1.07B, "Final Payment and Claims".

Estimated Cost of Potential Claim

KFM has estimated damages resulting from the delays determined by TBS and described in NOPC 6. A preliminary estimate of these damages is as follows:

Labor	\$18,010
Equipment	\$301,261
Outside Rental	<u>\$464,875</u>
Total	\$784,146

Settlement of NOPC 6 by TBS and the State may apportion responsibility for delay between the parties; KFM will re-determine its damages following any such apportionment.

Time Impact Analysis

KFM has determined that the pile delivery delays did not affect the project critical path and no adjustment to contract time of performance is warranted based on the issues underlying this NOPC.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM
CEM-6201B (NEW 9/2002)

FOR STATE USE ONLY

Received By

DATE

(For resident engineer)

TO

Pedro Sanchez

(resident engineer)

CONTRACT NUMBER

04-0120E4

DATE

February 1, 2008

IDENTIFICATION NUMBER

22-011808

This is a Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on: DATE

January 18, 2008

The particular nature and circumstances of this potential claim are described in detail as follows

See attached "NOPC 22-011808 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The basis of this potential claim including all relevant contract provisions are listed as follows:

See attached "NOPC 22-011808 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

See attached "NOPC 22-011808 -- Supplemental Notice of Potential Claim".

(attach sheets as required)

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows:

See attached "NOPC 22-011808 -- Supplemental Notice of Potential Claim".

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Kiewit/Fel/Manson ASV

SUBCONTRACTOR or CONTRACTOR

(Circle One)

George H. Atkinson

(Authorized Representative)

for Dan Proctor.

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

NOPC 22-011808 – Supplemental Notice of Potential Claim

Nature and Circumstances of Potential Claim

Initial Notice of Potential Claim #22-011808 outlines three items considered by Kiewit/FCI/Manson (“KFM”) to be administrative disputes and one item as a potential administrative dispute at the time of Contract Acceptance on January 18, 2008. They are:

Administrative Disputes

- 1) Labor compliance violation with respect to Inspection Services, Inc.
- 2) Bid Items #18 and 20 concrete temperature exceedance deduction
- 3) Bid Item #41 overbid deduction

Potential Administrative Disputes

- 1) Foreign Steel Incorporation

Two of the three administrative disputes remain as of the filing date of this Supplemental NOPC on February 1, 2008. They are items #2 and #3 above. The potential administrative dispute remains unresolved at this time as well.

Administrative Dispute Item #1, Labor Compliance deduction, has been resolved in Progress Estimate #46 dated January 25, 2008. The State released the compliance deduction after all labor compliance documentation had been submitted by KFM to the State.

Administrative Dispute Item #2, Concrete Temperature Exceedance deduction has not been resolved. KFM’s letter #366, dated January 17, 2008 details our position regarding the temperature exceedance. KFM has complied with the intent of the contract specifications by developing and implementing thermal control plans to best ensure that the concrete temperature would be maintained below the required 65 degrees C. As demonstrated, the maximum recorded variation over 65 degrees C is less than 2 degrees C.; this is reasonably within the tolerance limits of the measuring devices and predictive models.

The State’s rigid interpretation of the contract requirements regarding the maximum allowable concrete temperature led to the deduction under both Bid Item #18 and 20. This interpretation does not consider the degree of severity of the exceedance nor does it consider the quality of the final product received.

The minor exceedance, less than 2 degrees C., and the high quality of the final product accepted by the State on January 18, 2008 support KFM’s argument that the intent of the specifications has been met and that KFM is entitled to full payment under both Bid Items #18 and 20.

Administrative Dispute #3, Bid Item #41, Mobilization, overbid deduction. KFM bid the Mobilization bid item according to the Contract Specifications. The maximum bid amount for this item was capped by specification at 15% of the original contract amount or \$26,617,500.00. KFM’s bid price for this item was \$26,617,500.00 as well.

However, the State’s progress estimate system will pay up to a maximum of 10% of the original contract amount only for the Mobilization item. The State was able to pay KFM the total amount due for Mobilization by essentially working around the system. 10% of the original contract amount or \$17,745,000.00 was paid under the Bid Item #41 and the balance of \$8,872,500.00 has been paid

month after month under the Material On Hand ("MOH") category. This continued to be the case in the last regular monthly Progress Estimate #46, dated January 25, 2008.

KFM's concern is that when the Final Progress Estimate is issued and the Materials On Hand amount is taken to zero, the limitations of the State's progress estimate system will not allow for full payment to be made under Bid Item #41, but only the current maximum of 10% of the original contract amount. The \$8,872,500.00 now paid under MOH is currently at risk if the Progress Estimate system is not able to handle the 15% allowed by specification.

KFM requests that deductions made under Bid Items #18, 20 and 41 be returned to KFM on the next issued Progress Estimate, in accordance with Standard Specifications 9-1.07(A), "Payment Prior to Proposed Final Estimate".

Potential Administrative Dispute #1, Incorporation of Foreign Steel. KFM has incorporated foreign steel into the work with the State's knowledge. Requests for acceptance of this have not been answered. Removal of this material is not economically reasonable and would likely be deleterious to the as-built product. KFM is concerned that the product has remained in place without acceptance by the State exposing KFM to possible adverse actions by the State or other parties. KFM requests that the State issue a Contract Change Order in accordance with Standard Specification 4-1.03, "Changes", to accept materials as supplied and nullify restrictions on use of foreign material in the work as described in Special Provision 5-1.075, "Buy America".

Contract Basis for Potential Claim

Imminent completion of all contract work by KFM and Contract Acceptance by the Department without resolution of these administrative disputes gave rise to this NOPC.

Amended Standard Specification 9-1.07B, "Final Payment and Claims", fifth paragraph, notes that claims made in response to the Proposed Final Estimate following Contract Acceptance will not be considered if the Contractor did not first comply with applicable notice or protest requirements of the contract including 9-1.04 "Notice of Potential Claim".

Since the disputed deductions remained as December 20, 2007 progress estimate, and could not be reasonably anticipated to be released prior to anticipated completion date of January 18, 2008, KFM has made a Notice of Potential Claim to allow for claims associated with these administrative disputes in accordance with Amended Standard Specifications 9-1.04, "Notice of Potential Claim" and 9-1.07B, "Final Payment and Claims".

Cost Estimate for Potential Claim

Bid Item	Deduction
#18	(\$64,000.00)
#20	(\$42,000.00)
#41	(\$8,872,500.00)
Foreign Steel	Indeterminate

Time Impact Analysis

No adjustment to contract time of performance is proposed by this NOPC.